

61039

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS
ORDER

APPLICATION 3050 PERMIT 1396 LICENSE 1039

**ORDER AMENDING PLACE OF USE AND PURPOSE
OF USE OF LICENSE 1039**

WHEREAS:

1. License 1039 was issued to Thomas and Raker on May 12, 1931 pursuant to Application 3050 and was filed with the County Recorder of Modoc County on May 28, 1931.
2. License 1039 was subsequently assigned to Robert L. Schluter.
3. A request for a change in the place of use and addition of stockwatering and recreation as incidental uses was received by the State Water Resources Control Board (SWRCB) on December 12, 1985.
4. The SWRCB has determined the said modification to the place of use and addition of incidental beneficial uses to the purpose of use do not constitute the initiation of a new right nor operate to the injury of any other lawful use of water.
5. The license condition pertaining to the SWRCB's continuing authority should be replaced with the current version to conform with Section 780(a) Title 23, of the California Code of Regulations.

NOW, THEREFORE, IT IS ORDERED THAT:

1. The place of use is amended as follows: 700 acres within a gross area of 1,100 acres, all located within Sections 5, 6, and 7, T42N, R13E, MDB&M and Section 12, T42N, R12E, MDB&M.
2. Add stockwatering and recreation as incidental beneficial uses to the purpose of use.
3. The condition pertaining to the SWRCB'S continuing authority is amended as follows: Pursuant to California Water Code Sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this license including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board

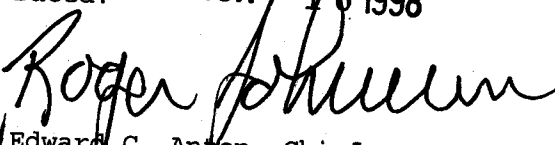
in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

The continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this license with a view to eliminating waste of water and to meeting the reasonable water requirements of licensee without unreasonable draft on the source. Licensee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the Board also may be exercised by imposing further limitations on the diversion and use of water by the licensee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust.

(0000012)

Dated: MARCH 18 1998


Edward C. Anton, Chief
Division of Water Rights



STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC WORKS
DIVISION OF WATER RESOURCES

License for Diversion and Use of Water

13802
Notice of Assignment (Over)

LICENSE 1039

PERMIT 1396

APPLICATION 5050

THIS IS TO CERTIFY, That **Thomas & Baker, Alturas, California**

has ~~made~~ made proof to the satisfaction of the Division of Water Resources of California of a right to the use of the waters of **Unnamed stream in Modoc County**

tributary of **North Fork of Pit River,**

for the purpose of **Irrigation use**

under Permit **1396** of the Division of Water Resources and that said right to the use of said waters has been perfected in accordance with the laws of California, the rules and regulations of the Division of Water Resources and the terms of the said permit; that the priority of the right herein confirmed dates from **September 22, 1922;**

that the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to the amount actually beneficially used for said purposes and shall not exceed **two hundred ninety-five (295) acre feet per annum by storage to be collected from about January 1st to about May 1st of each season, at a maximum rate of seventy-three (73) cubic feet per second.**

The point of diversion of such water is located **South eighty-three degrees four minutes West (S 83° 04' W) twenty-five hundred fifty (2550) feet from the North one quarter section corner of Section 21, T 43 N, R 13 E, M.D.B. & M., being within the NW 1/4 of NW 1/4 of said Section 21.**

The point of redirection of such water is located **North sixty degrees thirty minutes West (N 60° 30' W) three thousand (3000) feet from the Southeast corner of Section 20, T 43 N, R 13 E, M.D.B. & M., being within the NW 1/4 of SW 1/4 of said Section 20.**

A description of the lands or the place where such water is put to beneficial use is as follows:

A total of 1800 acres within a gross area of 2906 acres located within Sections 1, 2, 3, 10 and 11, T 42 N, R 12 E, and Sections 24 and 25, T 43 N, R 12 E, M.D.B. & M. as shown on map filed December 1, 1922.

In accordance with the provisions of Section 42 of the Water Commission Act, nothing herein shall be construed as confirming the right to use more than two and one-half (2½) acre feet of water per acre in any one year in the irrigation of uncultivated areas of land not devoted to cultivated crops.

0000999

The right to the diversion and use of the water aforesaid hereby confirmed is restricted to the point of diversion herein specified and to the lands or place of use herein described.

This license is granted and said appropriator takes all rights herein mentioned subject to the terms and conditions set forth in Section 20 of Chapter 586, Statutes 1913, which is as follows:

Sec. 20. All permits and licenses for the appropriation of water shall be under the terms and conditions of this act, and shall be effective for such time as the water actually appropriated under such permits and licenses shall actually be used for the useful and beneficial purpose for which said water was appropriated, but no longer; and every such permit or license shall include the enumeration of conditions therein which in substance shall include all of the provisions of this section and likewise the statement that any appropriator of water, to whom said permit or license may be issued, shall take the same subject to such conditions as therein expressed; *provided*, that if, at any time after the expiration of twenty years after the granting of a license, the state, or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the state shall have the right to purchase the works and property occupied and used under said license and the works built or constructed for the enjoyment of the rights granted under said license; and in the event that the said state, city, city and county, municipal water district, irrigation district, lighting district or political subdivision of the state so desiring to purchase and the said owner of said works and property can not agree upon said purchase price, said price shall be determined in such manner as is now or may hereafter be determined in eminent domain proceedings. If it shall appear to the state water commission at any time after a permit or license is issued as in this act provided that the permittee or licensee, or the heirs, successors or assigns of said permittee or licensee, has not put the water granted under said permit or license to the useful or beneficial purpose for which the permit or license was granted, or that the permittee or licensee, or the heirs, successors or assigns of said permittee or licensee, has failed to observe any of the terms and conditions in the permit or license as issued, then and in that case the said commission, after due notice to the permittee, licensee, or the heirs, successors or assigns of such permittee or licensee, and a hearing thereon, may revoke said permit or license, and declare the water to be unappropriated and open to further appropriation in accordance with the terms of this act. And the findings and declaration of said commission shall be deemed to be prima facie correct until modified or set aside by a court of competent jurisdiction; *provided*, that any action brought so to modify or set aside such finding or declaration must be commenced within thirty days after the service of notice of said revocation on said permittee or licensee, his heirs, successors or assigns. And every licensee or permittee under the provisions of this act if he accepts such permit or license shall accept the same under the conditions precedent that no value whatsoever in excess of the actual amount paid to the state therefor shall at any time be assigned to or claimed for any permit or license granted or issued under the provisions of this act, or for any rights granted or acquired under the provisions of this act, in respect to the regulations by any competent public authority of the services or the price of the services to be rendered by any permittee or licensee, his heirs, successors or assigns or by the holder of any rights granted or acquired under the provisions of this act, or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the state or any city, city and county, municipal water district, irrigation district, lighting district or any political subdivision of the state, of the rights and property of any permittee or licensee, or the possessor of any rights granted, issued, or acquired under the provisions of this act. The application for a permit by municipalities for the use of water for said municipalities or the inhabitants thereof for domestic purposes shall be considered first in right, irrespective of whether they are first in time; *provided, however*, that such application for a permit or the granting thereafter of permission to any municipality to appropriate waters, shall not authorize the appropriation of any water for other than municipal purposes; and *providing, further*, that where permission to appropriate is granted by the state water commission to any municipality for any quantity of water in excess of the existing municipal needs thereof, that pending the application of the entire appropriation permitted, the state water commission shall have the power to issue permits for the temporary appropriation of the excess of such permitted appropriation over and above the quantity being applied from time to time by such municipality; and *providing, further*, that in lieu of the granting of such temporary permits for appropriation, the state water commission may authorize such municipality to become as to such surplus a public utility, subject to the jurisdiction and control of the railroad commission of the State of California for such period or periods from and after the date of the issuance of such permission to appropriate, as may be allowed for the application to municipal uses of the entire appropriation permitted; and *provided, further*, that when such municipality shall desire to use the additional waters granted in its said application it may do so upon making just compensation for the facilities for taking, conveying and storing such additional water rendered valueless for said purposes, to the person, firm or corporation which constructed said facilities for the temporary use of said excess waters, and which compensation, if not agreed upon between the municipality and said person, firm or corporation, may be determined in the manner provided by law for determining the value of property taken by and through eminent domain proceedings.

Witness my hand and the seal of the Department of Public

Works of the State of California, this 12

day of May, 19 51

EDWARD HYATT
State Engineer

By Harold Conkling
Deputy



9/10/43

RECEIVED NOTICE OF ASSIGNMENT TO

Albert Thomas, C.A. Raker,
& Ira S. or E. Raker

1-4-46

RECEIVED NOTICE OF ASSIGNMENT

front of C.A. & Ira S
Raker to David J. & Elsie K. Bayne

11/14/57

RECEIVED NOTICE OF ASSIGNMENT

front of Albert Thomas to David
J. and Elsie K. Bayne

10/24/60 - Name Chg. from David J. to Estate of David J. Bayne

3-25-66

RECEIVED NOTICE OF ASSIGNMENT TO

Name Chgd. to Est of David
J. & Elsie K. Bayne

5-11-66

RECEIVED NOTICE OF ASSIGNMENT TO

Robert L. Schluter, dba. Thomas
& Baynes Ditch Company
1-18-85 Asgs to Robert L. Schluter

LICENSE 1039

STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC WORKS

DIVISION OF WATER RESOURCES

LICENSE
TO APPROPRIATE WATER

ISSUED TO Thomas & Raker

DATED May 12, 1951

70215-5 8-25 1600 CALIFORNIA STATE PRINTING OFFICE